723.

SUPREME COURT OF THE UNITED STATES.

No. 46.

CHARLES KING, APPELLANT,

VERSUS

JOSIAS THOMPSON, ADM'R, ET AL, HEIRS AT LAW OF GEO. KING.

APPEAL FROM THE CIRCUIT COURT U. S., WASHINGTON, D. C.

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Langtree & O'Sullivan, print.

724.

Style of Court.

DISTRICT OF COLUMBIA, *to wit:*

At a Circuit Court of the District of Columbia, begun and held in and for the County of Washington, at the City of Washington, on the fourth Monday of March, being the twenty-seventh day of the same month, in the year of our Lord one thousand eight hundred and thirty-seven, and of the Independence of the United States of America the sixty-first.

Were present:

The Hon. WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON, & JAMES S. MORSELL, *Assistant Judges.*
ALEXANDER HUNTER, *Marshal.*
WILLIAM BRENT, *Ck.*

In the Record of proceedings of the same Court are the following, to wit:

Parties.

CHARLES KING.
vs.
JOSIAS THOMPSON, and others.
Heirs at law of Geo. King.
} In Chancery.

This is a creditor's bill in the usual form, filed in December, 1822, by the complainant, a creditor of George King, setting forth that the personal estate of said George is insufficient to pay his debts, and that he left a large real estate in the county of Washington without specifying it, and praying a sale of said real estate to satisfy said debts, so far as the personal estate should prove insufficient. The defendants appeared and answered the bill, admitting its material allegations, and such proceedings were had thereon, that in January, 1823, a sale was decreed as prayed, and Charles King was appointed trustee to make the sale. Charles King declining to act in December, 1824, Raphael Semmes was substituted as trustee. Under the aforegoing decree, and a subsequent decree of April, 1830, the trustee made various sales duly reported to the court at different times from January, 1826, to March, 1831. When the final sales of all the property were reported, which sales were duly ratified by the court, excepting one of a house and lot on Cecil alley, in Georgetown, which sale, on a claim of the defendants, Josias Thompson and wife, was set aside in April, 1831, as the various sales were reported and ratified, ~~and it~~ and it

were ordered and made from March, 1827, to March, 1836, exhibiting the several claims established against the said George King, and marshalling the assets in the cause, on all which audits, excepting the last distributions of the assets in hand, were ordered and made. On the last report of the auditor coming before the court to be heard, Alexander Caldwell, administrator of the defendants, Josias Thompson, then deceased, exhibited to the court a claim set forth in the following order, which claim was opposed as therein set forth, and such proceedings were had thereupon, that on the 7th of April, 1837, said order was passed as follows:

CHARLES KING, Complainant.
vs.
HEIRS OF GEORGE KING, AMD OTHERS, Defendants. } In Chancery.

Creditor's Exceptions.

This cause coming on to be heard, on the motion of Alexander Caldwell, administrator of Josias Thompson, to recommit to the auditor his last report in this cause, with instructions to credit and allow a claim of said administrators against said George King, now presented, being the same claim heretofore audited and allowed in the cause of said Josias and wife, against the heirs of George King, and others, on the chancery side of this court, subject to the proper credits on said claim under the proceedings had in said last cause, and the said motion being opposed by Charles King, the Farmers and Mechanics Bank of Georgetown, and others, creditors of said George King, on the grounds that said claim constitutes no debt of George King ever entitled to dividend in this cause. That the claim, if any, is barred by the provisions of the Act of the General Assembly of Maryland for the limitations of actions at law.

And the rule of chancery practice adopting the same, and that the motion is inequitable; it is thereupon, by the court, this 7th day of April, 1837, ordered, adjuged, and decreed, that the exceptions of said creditors be, and they are hereby overruled, and that said claim be, and it is hereby allowed and admitted to an equal dividend with the other claims of creditors audited in this cause, and that said report be recommitted to the auditor to be reformed in accordance with this order. It is further ordered, that the auditor do at the same time take an account of any further moneys that may have come into the hands of the trustee in this cause, or the administrator of George King, since their last reports in this cause, and do marshal the same, and report thereon as soon as can be to this court.

By order of the Court.

Test: W. BRENT, *Ck.*

The cause of Josias Thompson and wife, against the heirs at law of George King, dec'd, and others, mentioned in said order, is the same cause reported in 8 Peter's Supreme Court Reports, page 204. And

it is agreed that said report, and the printed record of said cause, in said court, may be read at the hearing of this cause, as if the same were regularly incorporated in this record, as part of the evidence of said Caldwell's said claim exhibited before the circuit court on the receipt of the mandate of the Supreme Court in said cause, such farther proceedings were had in conformity thereto, that the claim of said Josias Thompson was audited and allowed in said cause to the amount of four thousand dollars, and the house and lot in said cause mentioned, was sold for the satisfaction of said claim, and produced the net sum of eight hundred and twenty-seven $\frac{38}{100}$ dollars, applicable to said claim, all which proceedings were had previously to, and were exhibited to the circuit court in this present cause at the time of the aforesaid order of the 7th of April, 1837, in conformity with said order of April 7th, 1837. The auditor made a further report on the 16th of July, 1837, as follows:

KING *vs.* KING.
KING *vs.* THOMPSON.
and
HOLLINGSHEAD *vs.* KING.

In Chancery, Circuit Court, Washington County, District of Columbia.

Auditor's Report and Statement.

The auditor has, according to the direction and decree of this court dated the 7th day of April, 1837, re-examined his audit and report made on the 18th March, 1836, and now reports: That he has examined and audited the account of Charles King, administrator of the estate of George King, deceased, and that by a statement of that account herewith submitted, the balance in the hands of said administrator is $8,305 76. That the amount of claims admitted by the auditor in his report of the 18th March, was $36,207 51, to which, as now admitted by the direction of the court under date 7th April, 1837, the claim of Josias Thompson's representative, $4,000, making the whole claim amount to $40,207 51. The whole amount of assets distributed and to be distributed, amount, as per statement, to $26,403 06. The dividend upon the whole is $65 66$\frac{2}{3}$ per cent.

Raphael Semmes, the trustee, has in his hands, yet to be distributed, $3,571 86, which he was enjoined from paying over to the creditors, during the pendency of the claim of Thompson, and that now having been decided by the permission or order of court, he will distribute. The auditor, in making the present audit, has confined himself to the distribution of the amount due from Charles King, the administrator, leaving the dividend in the hands of the trustee to be made as already fixed.

The dividend of Thompson's representatives, after receiving $827 38 for a house and lot, sold by William Stewart, is $1,809 29, which is to be paid out of the funds in the hands of Charles King. The dividend to the other creditors for the balance of the money in his hands is $17 94 per cent. If this claim of Thompson had not have been ordered to be allowed, the claims of the other creditors

would be entitled to a dividend of $22 96⅔ per cent., instead of $17 94. The several amounts and estimates are herewith submitted.

JOSEPH FORREST, *Aud'r.*

June 16th, 1837

Dr. *Charles King, Administrator of the Estate of George King, deceased, in Accl. with the representatives of Geo. King.* Cr.

1837.	To balance due as per settlement in the orphans court, 12th March, 1827 - - - -	$1,657 19½	1837.	By so much charged in the inventory in the orphan's court, as the value of a leasehold house on High street, Georgetown, which was unsold until the rendering your 2d account, the amount of sale whereof, is included in the charge of $10,265 31 per contra	$2,500
	To amount received since the date of the above settlement, per your acct. No. 2, being for debts collected, rents, dividends on stock of the Georgetown and Rockville Road Company, house rent, (after deducting taxes, &c.,) and for a leasehold estate in a house on High street, Georgetown, (after deducting taxes, auctioneer's bill, and attorney's fees, &c.,) No. 2.	10,265 31		By commission as adm'r. 10,265 31 891 58 9,373 73 1,350 add 10,723 73 at 5 per cent. -	536 18
	To 4 shares in the road stock, above mentioned, standing in the name of Geo. King, which cost $25 each, worth now - - - - -	60 00		By payments made to attorney's clerks, fees, advertising, &c., per report and vouchers - -	595 19
				By cost of copies from the register of the orphan's court, (to pay.) - - - - -	3 37½
				By auditor's bill (to pay.) - - -	42
				Balance - - - - -	8,305 76
		$11,982 50½			$11,982 50½
1837. June.	To balance per contra, to be distributed among the creditors of Geo. King, deceased	$8,305 76		JOSEPH FORREST, *Aud'r.* 16 June, 1837.	

Amount of claims per auditor's statement, dated 18 March, 1836.		$36,207 51
Claims of Josias Thompson's representatives now filed		4,000
Claims		40,207 51
Amount of assets in the hands of R. Semmes trustee, 1st audit		$13,698 04
Amount of do. 2d audit		3,571 86
Amt. in the hands of Charles King, administrator, per statement		8,305 76
		$25,575 68
Add net proceeds of sale of house and lot, sold by W. Stewart, trustee, as per report		827 38
Funds		$26,403 06

$26,403 06 funds: $40,207 51 claims: dividend $65 66⅔ per cent.

Josias Thompson's repre's claims 4,000: dividend	$2,626 67	
Deduct rec'd for N. proceeds of house and lot	827 38	
	$1,809 29	
Balance due from Chas. King	$8,305 76	
Deduct	1,809 29	
	$6,496 47	

$6,496 47, claims, $36,207 51: dividend $17 94 per cent.

To be paid by C. King to the following:

1. Francis Dodge claim	839 86	— dividend		150 66
2. James Corcoran	" 342 13½	"		61 38
3. John Snouffers	" 115 91	"		20 76
4. Farmers & Mechanics Bank	17,780 18	"		3,189 76
5. Henry Strider	1,267 50	"		227 44
6. Walter H. Smith	2,116 64	"		379 62
7. Walter Smith	58 68	"		10 57
8. Ign's Davis, assignee of Waring	1,361 85	"		244 32
9. Charles King	402 03	"		72 90
10. Elder & Taylor	745 29	"		133 70
11. Bank of Columbia	4,781 00	"		857 71
12. Jacob Payne	683 95	"		122 75
13. Aug's Taney's ex'rs	109 31½	"		19 61
14. Abner Cloud's heirs	3,714 36	"		666 36

15. Sabret E. Scott	327 75	"	58 80
16. C. T. Hemston	330 95	"	59 34
17. Hollingshead's represents	1,230 71	"	220 79
	$36,207 51		$8,305 76

JOSEPH FORREST, *Aud'r.*

June 16, 1837.

Creditor's Exceptions.

On the coming in of this report several creditors filed additional exceptions, as follows:

CHARLES KING compl't.
vs.
GEORGE KING'S reps. et al defts. } In Chancery.

In this cause, the complainant, as a creditor of George King, and as administrator of George King, now acting herein for, and in behalf of the creditors of said George, parties to this suit, and the Farmers and Mechanics Bank of Georgetown, Walter & Clement Smith, Walter Smith, Ignatius Davis, administrators, and the President, Directors, and Company of the Bank of the United States, assignees of the President, Directors, and Company of the Bank of Columbia, among said creditors of said George, not waving, but on the contrary, insisting on all former exceptions, now severally, and respectively, farther except to so much of the auditor's report in this cause, dated June 16, 1837, as allows to the claim of Alexander Caldwell, administrator of Josias Thompson, preferred and filed in this cause, a dividend of the assets in the hands of the administrator of George King, for distribution; and they for further causes of exceptions, charged:

1. That said claim does not, and never did constitute a debt of George King entitled to any dividend of the assets in this cause.

2. That said claim is not duly proved.

3. That said claim, if it were ever valid, is barred by the provisions of the Act of the General Assembly of Maryland, entitled "an act for limitation of certain actions, for avoiding suits at law," and the rule of chancery practice adopting the same: and said exceptors claim the benefit of said act and rule of chancery practice, and of any, and every other statute and rule of practice for the limitation of suits and actions applicable in the premises, as a defence against said claim, as if the same were ever so formally pleaded as a defence against the same.

4. That said claim is stale, inequitable, and unjust.

C. COX,
for Exceptors.

June 24, 1837.

And thereupon the court passed the following order:

Decree of Court overruling Exceptions.

CHARLES KING
vs.
GEORGE KING'S reps. et al. } In Chancery.

This cause coming again before the court to be heard, on the auditor's report of June 16th, present amended according to the former order of the court of the 7th day of April last, and the exceptions taken to said report, it is thereupon, by the court, this 28 day of June, 1837, ordered, adjudged, and decreed that said exceptions be, and they are hereby overruled, and that said report be, and it is in all respects ratified and confirmed: and that Raphael Semmes, the trustee, do pay to the complainant, to A. Taney's executrix, to the Farmers & Mechanics Bank of Georgetown, to Abner Cloud's heirs, or their solicitors, to the Bank of Columbia, to the executors of Ignatius Davis, to Elder & Taylor, to C. T. Hempston, to Sabret E. Scott, to Walter & Clement Smith, and to Walter Smith, severally, creditors of George King, or their respective attorneys, their respective dividends of the assets in the hands of said trustee for distribution, according to the report of the auditor, in this cause, of the 28th of March, 1836. And that Charles King, administrator of George King, do pay to the said creditors, and to Alexander Caldwell, administrator of Josias Thompson, or their certain attorneys, their respective dividends of the assets in the hands of said adminstrator for distribution, according to the aforesaid report of the auditor of the 16th of the present month.

By order of the court.

Test: W. BRENT, *Ck.*

28th June, 1837.

Appeal.

And thereupon, the said George King, by his solicitors aforesaid, prays an appeal from the judgment and decree aforesaid, made by the court in the premises to the Supreme Court of the United States, and to him it is granted: whereupon he files in court here the following appeal-bond, to wit:

Bond.

Know all men, that we, Charles King and Joseph King, both of the District of Columbia, are held and firmly bound unto Alexander Caldwell, administrator of Josias Thompson, deceased, in the full and just sum of five hundred dollars, current money of the United States of America, for the payment of which sum of current money, well and truly to be made and done, to the said Alexander Caldwell, his certain attorney, executors, administiators, or assigns, to which payment, well and truly to be made and done, we bind ourselves, and each of us, the heirs, executors and administrators of us, and

each of us, jointly and severally, firmly by these presents, sealed with our seals, and dated this twenty-ninth day of June, of the year of our Lord 1837.

Whereas, on a certain bill of complaint of said bounden Charles King, a creditor of George King, deceased, (as well in his own behalf as in behalf of the other creditors of said George King who might become parties to said bill of complaint) against the heirs at law of said George King, and others, in the circuit court of the District of Columbia, for the county of Washington, setting as a court of chancery, said Alexander Caldwell as administrator, as aforesaid, did obtain in, and from said court, at a term of said court begun and holden on the fourth Monday of March, of the year of our Lord one thousand eight hundred and thirty-seven, a certain order and decree, bearing date the twenty-eighth day of June inst., of the said year, against the said Charles King, as well as a creditor as aforesaid, as administrator of said George King, from which order and decree the said Charles King, as a creditor, and as administrator as aforesaid, and as well in his own behalf as in behalf of the other creditors of said George King, parties to the said suit, and prejudiced by said order and decree, hath prayed an appeal to the next Supreme Court of the United States.

Now the condition of the above obligation is such, that if the said Charles King shall prosecute his appeal to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be void; otherwise, to be and remain in full force and virtue.

CHARLES KING, [SEAL.]
JO. KING, [SEAL.]

Signed, sealed, and deliverd in presence of
JAMES THOMAS.

Approved: J. S. MORSELL.
June 29, 1837.

And the same being approved of, it is ordered, that a record of the proceedings aforesaid, with all things thereunto related, with the citation, be transmitted to the said Supreme Court, which is done accordingly.

In testimony that the aforegoing are true copies of entries taken from the docket of said court, I have hereto subscribed my name, and affixed the public seal of said court for the county aforesaid, this fifteenth day of September, 1838.

[SEAL.]

WILLIAM BRENT, *Clk.*